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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE MATTER OF:)	
J.A., M.P.B, M.L.B, A.M.S.,)	
J.S., AND L.J.S.,)	
)	
URSULA JOHNSON,)	
)	
Appellant-Respondent,)	
)	
vs.)	No. 45A03-0608-JV-382
)	
LAKE COUNTY OFFICE OF FAMILY)	
AND CHILDREN,)	
)	
Appellee-Petitioner.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Judge
Cause No. 45D07-0410-JT-113; 45D07-0410-JT-114;
45D07-0410-JT-115; 45D07-0410-JT-116;
45D07-0410-JT-117; 45D07-0410-JT-118

February 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Ursula Johnson (Mother), appeals the trial court's termination of her parental rights to M.B., M.L.B., L.S., A.S., J.S., and J.A. (collectively, the children).

We affirm.

ISSUE

Mother raises one issue on appeal, which we restate as: Whether the evidence was sufficient to terminate her parental rights to the children.

FACTS AND PROCEDURAL HISTORY

On July 14, 2003, following a report that Mother's children had been left at home without adult supervision, the East Chicago Police Department made a referral to the Lake County Office of Family and Children, now called the Lake County Department of Child Services (DCS). Upon investigation, DCS' case manager, Ebony Williams (Williams), found no food, no beds, and no working stove or refrigerator in Mother's home. As a result, DCS removed all six children from the home, including: M.B., born August 6, 1991; M.L.B., born October 1, 1992; L.S., born April 21, 1994; A.S., born June 18, 1995; J.S., born March 18, 1998; and J.A., born March 8, 2000.

On July 17, 2003, the trial court held a detention hearing, declared the children temporary wards of the State, and ordered Mother to: complete parenting classes, take

random drug screens, initiate home-based services, and obtain suitable housing and placement for the children. On October 27, 2003, the trial court held a hearing on the DCS's petition for Children in Need of Services (CHINS) and the children were adjudicated CHINS, although the goal was to eventually reunite Mother and her children. In the mean time, the children were divided into three separate foster homes.

After the initial CHINS adjudication, the trial court held periodic Permanency Plan Review hearings. At the outset, Mother complied with much of the case plan, completing parenting classes, receiving home-based services, and passing random drug screens. However, Mother still failed to comply with supervised visitation with her children and to find suitable housing. She was also noncompliant with family counseling. Thus, on October 1, 2004, the DCS filed its Petition for the Involuntary Termination of Parental Rights seeking to terminate Mother's rights to all six children. On April 12, 2006 and May 22, 2006, the trial court held a fact-finding hearing on the Petition. On May 22, 2006, the trial court granted the DCS's Petition to terminate Mother's relationship to her children and entered the following Order, in pertinent part:

The allegations of the [P]etition are true:

The child(ren) [have] been removed from their parent[s'] for [at] least six (6) months under a dispositional decree(s) of this [c]ourt dated October 27, 2003 as to [Mother] and November 14, 2003 as to all the fathers. . . .

The child(ren) [have] been removed from the parent and [have] been under the supervision of the [DCS] for at least fifteen (15) of the most recent twenty-two (22) months.

There is a reasonable probability that the conditions resulting in the removal of the child from their parents' home will not be remedied in that: [Mother] continues to lack a safe, appropriate[,] and suitable housing for

herself and her children. [Mother] has not had consistent contact with her children. Mother has failed to comply with the case plan. [Mother] has not provided any financial or emotional support for the children. The current foster parents for [several] of the children are interested in adoption. The whereabouts of several of the fathers is unknown. No paternal relatives have come forward to offer to accept custody of the children. No maternal relatives have requested placement of the children. The parents apparently are not interested in parenting the children.

Further, the [c]ourt finds the children have been in placement since July 2003 and have not been returned to parental care. None of the fathers have been involved with the children. [The court] finds the mother has been unreliable and inconsistent. Mother completed parenting classes[,] but did not complete counseling. [The court] finds the mother has moved from the State of Indiana and placed herself in the State of Illinois[,] which has made it near impossible for her to participate in services for the children. [The court] finds she did not visit the children consistently nor did she consistently appear for drug evaluations or drug drops. [The court] finds [Mother] did not address the [children's] educational needs or special needs[,] nor did she provide them with medical attention to address those special needs that they were all experiencing. Mother did not provide any services to the children to address their sexually acting out between or among each other.

There is a reasonable probability that the continuation of the parent-child relationship poses a threat to the well-being of the [children] in that: for all the reasons stated above.

It is in the best interest of the [children] and their health, welfare and future that the parent-child relationship between the [children] and their parents be forever fully and absolutely terminated.

The [DCS] has a satisfactory plan for the care and treatment of the [children,] which is [p]lacement in a permanent adoptive [homes] and supervision in placement pending the granting of an adoption.

(Appellant's App. pp. 2-3).

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother argues that the evidence presented at the termination hearing was insufficient to terminate her parental rights to the children. Specifically, Mother contends that the evidence failed to demonstrate that the conditions leading to the children's removal would not be remedied, or that continuation of the parent-child relationship poses a threat to the children. In addition, Mother asserts that the DCS failed to show that termination was in the children's best interest.

I. *Standard of Review*

We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

The involuntary termination of parental rights is the most extreme measure that a court can impose and is designed only as a last resort when all other reasonable efforts have failed. *In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). This policy is in recognition of the Fourteenth Amendment to the United States Constitution, which provides parents with the right to establish a home and raise children. *See id.* However, these protected parental rights are not absolute and must be subordinated to the children's interest to maintain the parent-child relationship. *Id.*

The purpose of terminating parental rights is not to punish parents but to protect their children. *Matter of A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Although

parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents. *Id.* In the present case, to effect the involuntary termination of Mother's parental rights to her children, the DCS must have presented clear and convincing evidence establishing that:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999 the child has been removed from the parent and has been under the supervision of a county officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

- (i) the condition that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

Additionally, in determining whether a reasonable probability exists that the reasons for removal will not be remedied, the trial court must judge the parent's fitness to

care for the children at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. A trial court must also “evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation.” *Id.*

II. *Conditions Leading to the Children’s Removal*

Mother first argues that the DCS failed to show by clear and convincing evidence that the conditions leading to the children’s removal would not be remedied. In particular, Mother alleges that the trial court improperly concluded that she could not provide adequate housing for the children, as the DCS never investigated her living conditions in Illinois.

We reiterate that a trial court must determine whether the conditions leading to a child’s removal will be remedied by analyzing the parent’s fitness at the time of the termination hearing. *Id.* However, it is worth noting that at the time the children were removed from Mother’s care, her home had no working stove, no refrigerator, no food, and no beds for the children to sleep in. Additionally, there is evidence in the record that the children were dirty and inadequately clothed. More importantly, our review of the record indicates that soon after the children were removed, she became homeless. Although Mother communicated with the DCS from a homeless shelter for a while, the record discloses that Mother has not had physical contact or sought visitation with her children since April of 2004, has not informed the DCS of any new living situation, and previously expressed no desire to have the children placed with her in Illinois.

In our view, it is not the responsibility of the DCS to track down Mother in another state and investigate her living conditions. Rather, Mother was responsible for following the trial court's orders and the DCS's case plan to protect her rights to her children. While there is evidence in the record that Mother initially complied with portions of the DCS's case plan, she ultimately failed to complete its requirements and ceased contact with the DCS. Thus, because, as DCS case manager, Irene Edwards (Edwards), testified at the fact-finding hearing, Mother "did not make herself accessible," we conclude that the trial court had no reason to believe that Mother had remedied the substandard conditions that initiated the children's removal. (Transcript p. 76). Accordingly, it is our determination that the trial court did not err in finding that the conditions leading to the children's removal are unlikely to be remedied.

III. *Threat to Children*

Mother next contends that the DCS did not prove by clear and convincing evidence that continuation of her relationship with the children poses a threat to them. Even though I.C. § 31-35-2-4 only requires that the DCS prove that there is a reasonable probability that the conditions leading to removal will not be remedied, *or* that continuation of the parent-child relationship poses a threat to the children, we will briefly address Mother's argument.

The record, here, reveals that the DCS was called to Mother's home because her six children, ranging from three to twelve years old, had been left alone for a lengthy period of time. More specifically, the record indicates that Mother left the children alone and traveled to another state, Illinois, to claim welfare benefits. Furthermore, testimony

given at the termination hearing reveals that Mother did not contact the DCS to inquire as to her children's whereabouts until a day or two after the DCS removed the children. Thus, in our evaluation, there is no question that a parent who leaves six children home alone with no food, no beds, and no clean clothes for an entire day, or perhaps longer, poses a threat to those children's health, well-being, and safety. Accordingly, we conclude that the trial court did not err in finding that the continuation of Mother's relationship with her children would pose a threat to their well-being.

III. *Best Interest of the Children*

Finally, Mother argues that the DCS failed to show by clear and convincing evidence that termination was in the children's best interest. Specifically, Mother contends that termination was not in the children's best interest because she had a close relationship with them and they are likely to suffer severe anguish upon separation from her. We disagree.

In determining what is in the best interests of the children, we are mindful that the trial court is required to look beyond the factors identified by the DCS, and look to the totality of the evidence. *See McBride v. Monroe County Office of Family and Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parents to those of the children. *Id.* The trial court need not wait until a child is irreversibly harmed before terminating the parent-child relationship. *Id.*

In the present case, the totality of the evidence supports a conclusion that Mother, despite recognizable effort, is simply unable to care for her children. Even though she made attempts to fulfill the obligations of the case plan laid out by the DCS, at one time

even obtaining housing, the record shows that she was never able to follow through on the entirety of the case plan or find housing suitable for all six children to live. The record further includes evidence that all six children have special education needs and behavioral problems that are being addressed in their respective foster homes. Additionally, DCS' case manager, Edwards, testified at the termination hearing that in her opinion, termination was in the best interest of the children because the services offered to Mother to promote reunification with her children simply were not successful. In addition, Edwards noted that the children's foster families have provided them with stability, and there are plans for each child to be adopted by their respective foster parents. Therefore, we conclude that the evidence was sufficient to support the trial court's finding that termination was in the children's best interest.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Mother's parental rights to her children.

Affirmed.

KIRSCH, C.J., and FRIEDLANDER, J., concur.